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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/755,884	01/05/2001	Christoph Lodde	44815/251563	4102
7590		04/13/2004	EXAMINER	
Roger T. Frost, Esq. Merchant & Gould, LLC 3200 IDS Center 80 South 80th Street Minneapolis, MN 55402-2215		CHANG, VICTOR S		
		ART UNIT	PAPER NUMBER	
		1771		
DATE MAILED: 04/13/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/755,884

Applicant(s)

LODDE, CHRISTOPH

Examiner

Victor S Chang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. The Examiner has carefully considered Applicants' amendments and remarks filed on 12/5/2003. Applicants' amendments to claim 1 has been entered.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Rejections not maintained are withdrawn.

### ***Claim Objections***

4. Claims 3, 5 and 6 are objected to because of the following informalities:

In claim 3, the Examiner suggests to insert --process-- after "reinforced by at least one", so as to clarify the product-by-process element.

For claims 5 and 6, since multiple species are recited in each claim, the Examiner suggests that Markush format is more appropriate for these claims. A proper Markush format is "wherein R is a material selected from the group consisting of A, B and C." See MPEP § 2173.05(h).

Appropriate correction is requested.

### ***Claim Rejections - 35 USC § 112***

5. Claims 1-3 and 5-9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to

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one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

More particularly, in newly amended claim 1, line 5, the phrase "at least one" appears to be "new matter", because Applicant has not pointed out any express or inherent support of "at least one" adhesive coating in the Specification, nor does the Examiner find "at least one" adhesive coating being either expressly or inherently taught in the Specification. Correction is requested.

6. Claims 1-3 and 5-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In newly amended claim 1, the inclusion of an open phrase "at least one", at line 4, within a closed clause "consisting essentially of" renders the claim vague and indefinite, because it is not clear as to what is the scope and content of the claimed invention. Clarification and proper rewrite is requested.

### ***Response to Amendment***

7. Claims 1-3 and 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mamish (US 5227225), substantially for the reasons set forth in section 4 of Paper No. 18, together with the following additional observations.

With respect to Applicant's drawing illustrating the structure of Mamish's structure, the Examiner notes that the drawing is inconsistent with Mamish's teaching. In particular, Mamish teaches in Example 1 that the coated polyolefin layer and the

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adhesive layer are on the opposed surface of the cloth (nonwoven), whereas Applicant's drawing shows both coatings are on one side of the nonwoven, with the adhesive forming the outer layer.

With respect to Applicant's argument that "The impregnation according to the present invention instead enables one to apply an adhesive on both sides of the support excluding a penetration of the adhesive into the support" (Remarks, page 5, bottom paragraph), the Examiner respectfully notes that Applicant appears to be confused and arguing away from the instantly claimed invention. It is noted that the last two lines of newly amended claim 1 recites "in such as way that penetration of the adhesive coating through the textile tape support is prevented." As such, clearly the adhesive of the instantly claimed invention does penetrate into the nonwoven support, but not through (i.e., out to the opposite side), and which also clearly read upon by Mamish's invention, Applicant's argument to the contrary notwithstanding.

With respect to Applicant's argument that the lowest coating weight in Table I is 34.9 g/m<sup>2</sup> which is greater than the instantly claimed range of 1 to 5 g/m<sup>2</sup> (Remarks, page 6, first full paragraph), the Examiner notes that while Mamish is silent about the lower thickness limit of the polyolefin coating, Mamish does teach the combined thicknesses of outer (coating) and inner (nonwoven support) layers being no greater than about 3.0 mils (column 6, lines 36-41). Further, no where does Mamish teach the thickness in Table I is limiting. As such, the Examiner repeats (see Paper No. 11, page 4) that, in the absence of unexpected results, a suitable low amount of the basis weight of the polyolefin coating is believed to be either implicitly disclosed or an obvious

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optimization to one of ordinary skill in the art, motivated by the common desire to reduce the cost.

With respect to Applicants' response arguing that "the question ... whether the non-woven would be protected from bleeding-through without a coating. The answer to this question is, based only on Mamish's disclosure, only speculation" (Remarks, page 6, bottom paragraph), the Examiner notes that Mamish expressly teaches that the polyolefin backing layer of the masking tape acts as a sealant to the discontinuous nonwoven surface; serves as a barrier layer against adhesive migration (column 1, line 63 to column 2, line 4), Applicant's argument to the contrary notwithstanding.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S Chang whose telephone number is 571-272-1474. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DANIEL ZIRKER  
PRIMARY EXAMINER  
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*Daniel Zinker*